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United States Senate

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON

ADMINISTRATIVE PRACTICE AND PROCEDURE

(PURSUANT TO SEC. 3, S. RES. 72, 94TH CONGRESS)

WASHINGTON, D.C. 20510

Executive Registry

76-2474

OLC 76-1646

June 7, 1976

Honorable George Bush
Director
Central Intelligence Agency
Washington, DC 20505

Dear Director Bush:

I noted in the Washington Post of June 4, 1976, that the Central Intelligence Agency plans to destroy secret records compiled over the past year concerning illegal and improper agency activities. As chairman of the Senate Subcommittee on Administrative Practice and Procedure, which monitors federal information practices and has jurisdiction over agency administration of the Freedom of Information Act, I urge you to defer any such planned destruction for the foreseeable future.

First, the Senate has recently established a new Select Committee on Intelligence Oversight which is not yet fully organized. As a strong supporter of the Resolution establishing that Committee, I believe that its members should first have the chance to make an independent determination whether any of the documents in question might be necessary or useful to their activities.

Second, there are federal statutes relating to the maintenance of records which may be applicable to the records in question, even if they were illegally compiled or reflect improper agency activities. Although you may have determined that those laws are not here applicable, FBI Director Kelley, for example, has publicly stated that the Bureau could not destroy similar materials because of

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federal record-keeping laws. I would like for my subcommittee to have the opportunity to review those provisions in light of the proposed document destruction.

Third, proposals have been advanced that would require federal agencies engaged in illegal activities which may have violated the constitutional rights of American citizens to notify those persons of such activities. The Department of Justice is entertaining such a proposal, and legislation to that effect is presently pending in the House. Destruction of the records in question may make notice impossible, and thus should be deferred until Congress has determined whether or not to act in this area.

Fourth, there is pending in the House legislation (which I am considering introducing in the Senate) to allow certain classes of persons to sue the federal government for injury arising from the administering of dangerous drugs by federal agents or employees without the informed consent of those persons. (A private bill affording payment of a settlement in the case involving the Olsen family has already cleared the Senate.) Destruction of records might present an obstacle to the Congress's ability to make judgments in future cases like this.

Fifth, there may be outstanding requests under the Freedom of Information Act that encompass the material in question. In at least one reported case, a federal court has strongly criticized an agency for proceeding, even under a routine records-destruction procedure, to dispose of documents falling within the plaintiff's request; it would be unconscionable for this to occur again.

In short, while it has been reported that you have concluded that records destruction will be consistent with applicable laws and requirements of pending litigation and Justice Department investigations, it is equally important that any such destruction be considered in light of pending or proposed legislation and congressional investigations, and further, that there be no ambiguity as to the application of such "applicable laws."

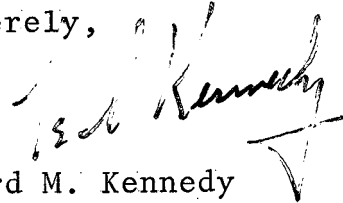
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Obviously any after-the-fact assessment would be fruitless where the proposed action would obliterate the only material which would provide any basis for such assessment.

It is inconceivable to me that the Central Intelligence Agency would not have sufficient file storage capacity to maintain the integrity of the documents in issue for the foreseeable future. In light of the continuing interest of the Congress and the public in the intelligence activities of government--past as well as future--I therefore request that the proposed document destruction not be carried out until the many congressional committees with an interest in this area have been heard on the matter.

Sincerely,



Edward M. Kennedy
Chairman

cc: Honorable Mike Mansfield, Majority Leader
Honorable Hugh Scott, Minority Leader
Honorable James O. Eastland, Chairman, Committee on Judiciary
Honorable Daniel K. Inouye, Chairman, Senate Intelligence Oversight Committee
Honorable John V. Tunney, Chairman, Senate Subcommittee on Constitutional Rights
Honorable Peter W. Rodino, Jr., Chairman, House Committee on the Judiciary
Honorable Donald Edwards, Chairman, House Subcommittee on Civil and Constitutional Rights
Honorable Jack Brooks, Chairman, House Committee on Government Operations
Honorable Bella Abzug, Chairman, House Subcommittee on Individual Rights and Government Information

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